

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERIC ALAN TILLOTSON, et al.,

Plaintiffs,

v.

No. 16cv77 RJ/LAM

FRANCISCO DOMINGUEZ, et al.,

Defendants.

ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiff's Complaint, Doc. 1, filed February 3, 2016, and on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed February 3, 2016 ("Application"). For the reasons stated below, the Court will **DENY** Plaintiff's Application and **DISMISS** this case **without prejudice**.

Plaintiff did not file this case in the proper district. Plaintiff states that he is a resident of El Paso County, Texas. *See* Complaint at 1. The Complaint alleges Defendants Francisco Dominguez, Javier Alvarez reside in El Paso, Texas. The Complaint also names the County of El Paso, Texas, the State of Texas and the United States of America as defendants. None of the Defendants reside in the District of New Mexico. The factual allegations in the Complaint indicate the events giving rise to this case occurred in or near El Paso County. The statute governing venue states:

(b) Venue in general.--A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

....

(c) Actions where defendant is officer or employee of the United States—

(1) In general.--A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action.

28 U.S.C. §1391(b) and (e)(1). The District of New Mexico is the wrong venue for this case because the Plaintiff the Defendants do not reside in, and a substantial part of the events giving rise to Plaintiff's claims did not occur in, the District of New Mexico.

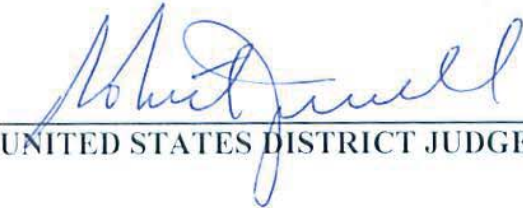
The Court will dismiss this case for improper venue. *See* 28 U.S.C. § 1406(a) ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought"). Transferring the case would be pointless because the Complaint filed in this case is identical¹ to the complaint Plaintiff filed in the Western District of Texas, El Paso Division, on September 25, 2015. *See Tillotson v. Dominguez*, 3:15-cv-00284 DB. Dismissing this case, instead of transferring it to the Western District of Texas, will not prejudice Plaintiff because his case is still pending in the Western District of Texas.

¹ The Complaint filed in this case even has the date stamp of Western District of Texas, El Paso Division, showing the September 25, 2015 filing in the Western District of Texas, El Paso division.

The Court will deny Plaintiff's Application to proceed *in forma pauperis* as moot because the Court is dismissing this case.²

IT IS ORDERED that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed February 3, 2016, is **DENIED** as moot.

IT IS ALSO ORDERED that this case is **DISMISSED** without prejudice.



UNITED STATES DISTRICT JUDGE

² The Court for the Western District of Texas, El Paso Division, denied Plaintiff's Motion for Leave to Proceed *in forma pauperis* on November 6, 2015; the Court received the \$400 filing fee on December 3, 2015. See Doc's 16, 29 in *Tillotson v. Dominguez*, 3:15-cv-00284 DB (W.D.Tex., El Paso Div.).